



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 2 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Clara G. Poffenberger
BAKER & BOTTS, L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Re: File No. AED/MSEB - 4779
Ashland Petroleum Company

no
Sign date

NOTICE OF VIOLATION OF THE CLEAN AIR ACT AND
REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE
CLEAN AIR ACT

Dear Ms. Poffenberger:

On September 6, 1996, the U.S. Environmental Protection Agency ("EPA") conducted an inspection of United Dairy Farmers, Inc.'s gasoline retail outlet, located at 509 Licking Pike, Wilder, Kentucky 41071. EPA also conducted follow-up investigations at Prescott Tank Lines, Inc. ("Prescott"), located at 3955 Montgomery Road, Cincinnati, Ohio 45212, and Ashland Petroleum Company, located at 230 East 33rd Street, Covington, Kentucky 41015. The inspection and follow-up investigations were conducted to determine compliance with section 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations issued thereunder (40 C.F.R. Part 80, subpart D). Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

The applicable regulations provide that no person may combine any VOC-controlled reformulated gasoline that is produced using ethanol with any VOC-controlled reformulated gasoline that is produced using any other oxygenate during the period January 1 through September 15. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

As a result of the inspection and follow-up investigations, EPA has determined that during August and September 1996 Ashland sold and supplied VOC-controlled reformulated gasoline that contained ethanol and MTBE. Where the gasoline contained in any storage tank at any retail outlet or terminal is found in violation, 40 C.F.R. § 80.79(a) states that the refiner and/or distributor shall be deemed in violation. As a refiner and distributor who combined ethanol VOC-controlled reformulated gasoline with MTBE VOC-controlled reformulated gasoline, Ashland is liable for violation of § 80.78(a)(8).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of each violation and the economic benefit or savings resulting from the violation. In determining the appropriate penalty for the noticed violation, we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Clean Air Act, actions taken by you to remedy the violation and to prevent recurrence of further violations, the effect of the penalty on your ability to continue in business and such other matters as justice may require.

We believe it is in your interest to demonstrate that remission or compromise of the penalty amount is appropriate. However, in order to assist us in developing the appropriate penalty and settlement positions, we have prepared the enclosed Request for Information. Under the law you are required to submit this information or be subject to additional penalties and other sanctions above and beyond those assessed for the fuel violation identified in this Notice. In addition, if you do not submit this information in a timely manner, we will be forced to make assumptions with regard to the factors to consider in determining the appropriate amount of civil penalty which may not be in your interest or whether remission or compromise of the civil penalty amount is appropriate.

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

The EPA attorney designated below has been assigned to this case. All information should be sent to the case attorney. Please contact this attorney regarding the Notice of Violation and Request for Information.

Jocelyn L. Adair, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch (2242-A)
Air Enforcement Division
401 M Street, S.W.
Washington, D.C. 20460
Phone number: (202) 564-1011

Please let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

Bruce C. Buckheit
Bruce C. Buckheit, Director
Air Enforcement Division

Enclosure

Enclosure

REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE
CLEAN AIR ACT, 42 U.S.C. § 7414

Re: File No. AED/MSEB -

Section 114(a) of the Act, 42 U.S.C. § 7414(a), provides that " the Administrator may require any person.... who is subject to any requirement of this Act ...to make such reports ... and provide such other information, as the Administrator may reasonably require." Respondent is subject to the requirements and prohibitions of the reformulated gasoline ("RFG") and anti-dumping requirements of section 211(k) of the Act, 42 U.S.C. § 7545(k) and thereby is also subject to the informational requirements of section 114(a) of the Act.

Pursuant to the authority contained in section 114 of the Act, 42 U.S.C. § 7414, provide the following information for Ashland's Covington Terminal for the period January 1, 1996 through September 15, 1996.

1. A complete description of the gasoline distribution operations conducted at the terminal, including
 - a. The number, description, and use of each tank used to store gasoline, ethanol, and MTBE at the terminal.
 - b. The frequency of sampling and testing each gasoline storage tank to determine whether or not the gasoline complied with the reformulated gasoline standards.
2. Provide a complete inventory of each gasoline storage tank, including (i) the origin of the gasoline in the tank, (ii) the date of receipt and the volume of gasoline in the tank before and after the receipt of gasoline, and (iii) the destination of the gasoline leaving the storage tank (e.g., truck loading rack).
3. For each receipt of gasoline at the terminal, provide the following:
 - a. A copy of the product transfer document.
 - b. A copy of the test results on the incoming gasoline.
 - c. The date of receipt of gasoline into the

storage tank and the identity of each storage tank that received the gasoline.

d. Provide the date of sampling, describe the sampling method used to collect samples of gasoline from the storage tank, and provide the name and address of the person who took the sample.

e. Provide the date of testing and all test results on each gasoline storage tank.

4. Provide any documents demonstrating Ashland's quality assurance program to prevent the commingling of ethanol VOC-controlled gasoline with MTBE VOC-controlled gasoline.

5. Provide documents demonstrating what actions were taken to remedy the violations and to ensure that similar types of violations are less apt to occur in the future, including evidence of sampling and testing of retail outlets and wholesale purchaser-consumer facilities and the issuance of any stop sale orders.

6. Any and all other information indicating that remission or compromise of the civil penalty is appropriate. You may elect to augment your explanation of the cause of the violation, and any mitigating factors you desire to bring to our attention.

The response to this request shall be full, complete, and to the best of your knowledge. A reply which is false, misleading, or made without regard to its veracity is, in our judgment, equivalent to a refusal to submit information. In order for us to proceed expeditiously with our enforcement docket, your response must be submitted within fifteen days after the date of this letter. If you encounter difficulty in responding to this request within this time frame, please contact the case attorney identified herein. Absent a written extension of the required response date, your failure to respond by the date set forth may lead to immediate enforcement action and a lost opportunity for early settlement of this matter. EPA's enforcement options include the issuance of a compliance order by the Administrator under section 113(a) of the Act, or the filing of a civil action seeking a permanent or temporary injunction, or a civil penalty of not more than \$25,000 per day of violation, or both, under section 113(b) of the Act. Please be aware that a knowing or willful submission of false, fictitious, or fraudulent statements or representations may subject you to possible criminal liability for filing false statements.

Pursuant to EPA regulations appearing at 40 C.F.R. Part 2, you are entitled to assert a confidentiality claim covering any part of the submitted information. If you do not assert such a claim, the submitted information may be available to the public without further notice. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above cited regulations.